

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES G. WEBB, an individual,

Plaintiff,

Case No. 2:19-cv-12528

Hon. Bernard A. Friedman

-vs-

JOHN J. SLOSSON, in his individual official
Capacity as an Oakland County Deputy Sheriff
and the CITY OF PONTIAC, a local municipality,

Defendants.

KHAN LAW MI PLLC
HAMMAD A. KHAN (P80039)
Attorney for Plaintiff
1 Ajax Drive, Suite 101
Madison Heights, MI 48071-2432
(248) 951-8111 / Fax: (734) 418-8326
hkhan@khanlawmi.com

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER, PC
ANNE MCCLOREY McLAUGHLIN (P40455)
MELANIE M. HESANO (P82519)
Attorney for Defendant City of Pontiac only
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100 / Fax: (248) 489-1726
amclaughlin@rsjalaw.com
mhesano@rsjalaw.com

**Answer of Defendant, City of Pontiac, to Complaint,
Affirmative Defenses and Reliance upon Jury Demand**

Defendant, City of Pontiac (City), through its attorneys, Rosati Schultz Joppich
& Amtsbuechler, PC, answers Plaintiff's Complaint as follows:

I. Introduction

1. Answering Paragraph 1, Defendant City states that the paragraph contains no

factual allegations requiring a response. Defendant denies that Plaintiff was unlawfully detained or seized or otherwise suffered a violation of his rights protected by the Constitution.

2. Answering Paragraph 2, Defendant City states that the paragraph contains no factual allegations requiring a response. In further answer, Defendant City denies Plaintiff's legal conclusions as not true.

3. Answering Paragraph 3, Defendant City states that the paragraph contains no factual allegations requiring a response. In further answer, Defendant City denies Plaintiff's legal conclusions as not true.

II. Jurisdiction and Venue

4. Defendant City incorporates by reference its answers to Paragraphs 1 through 3 of the Complaint, as though fully set forth herein.

5. Answering Paragraph 5, Defendant City denies the allegations therein as they are not true.

6. Answering Paragraph 6, Defendant City denies the allegations therein as they are not true.

7. Answering Paragraph 7, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

III. Parties

8. Defendant City incorporates by reference its answers to Paragraphs 1 through 7 of the Complaint, as though fully set forth herein.

9. Answering Paragraph 9, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

10. Answering Paragraph 10, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

11. Answering Paragraph 11, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

IV. Averment of Facts

12. Defendant City incorporates by reference its answers to Paragraphs 1 through 11 of the Complaint, as though fully set forth herein.

13. Answering Paragraph 13, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

14. Answering Paragraph 14, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

15. Answering Paragraph 15, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

16. Answering Paragraph 16, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

17. Answering Paragraph 17, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

18. Answering Paragraph 18, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

19. Answering Paragraph 19, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

20. Answering Paragraph 20, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

21. Answering Paragraph 21, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

22. Answering Paragraph 22, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

23. Answering Paragraph 23, Defendant City denies the allegations therein as they are not true.

24. Answering Paragraph 24, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

25. Answering Paragraph 25, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

26. Answering Paragraph 26, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

27. Answering Paragraph 27, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

28. Answering Paragraph 28, Defendant City denies the allegations therein as they are not true.

29. Answering Paragraph 29, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

V. Claims

Count One- First Amendment Retaliation

30. Defendant City incorporates by reference its answers to Paragraphs 1 through 29 of the Complaint, as though fully set forth herein.

31. Answering Paragraph 31, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

32. Answering Paragraph 32, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

33. Answering Paragraph 33, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

34. Answering Paragraph 34, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

35. Answering Paragraph 35, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

36. Answering Paragraph 36, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

37. Answering Paragraph 37, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

38. Answering Paragraph 38, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

Count Two- Fourth Amendment

39. Defendant City incorporates by reference its answers to Paragraphs 1 through 38 of the Complaint, as though fully set forth herein.

40. Answering Paragraph 40, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

41. Answering Paragraph 41, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

42. Answering Paragraph 42, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

43. Answering Paragraph 43, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

44. Answering Paragraph 44, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

45. Answering Paragraph 45, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

46. Answering Paragraph 46, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

Count Three- False Arrest

47. Defendant City incorporates by reference its answers to Paragraphs 1 through 46 of the Complaint, as though fully set forth herein.

48. Answering Paragraph 48, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

49. Answering Paragraph 49, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

50. Answering Paragraph 50, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

51. Answering Paragraph 51, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

Count IV- False Imprisonment

52. Defendant City incorporates by reference its answers to Paragraphs 1 through 51 of the Complaint, as though fully set forth herein.

53. Answering Paragraph 53, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

54. Answering Paragraph 54, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

55. Answering Paragraph 55, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

56. Answering Paragraph 56, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

57. Answering Paragraph 57, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

58. Answering Paragraph 58, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

59. Answering Paragraph 59, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

60. Answering Paragraph 60, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

Count V- Malicious Prosecution

61. Defendant City incorporates by reference its answers to Paragraphs 1 through 60 of the Complaint, as though fully set forth herein

62. Answering Paragraph 62, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

63. Answering Paragraph 63, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

64. Answering Paragraph 64, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

65. Answering Paragraph 65, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

66. Answering Paragraph 66, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

67. Answering Paragraph 67, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

68. Answering Paragraph 68, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

69. Answering Paragraph 69, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

70. Answering Paragraph 70, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

71. Answering Paragraph 71, Defendant City neither admits nor denies the allegations for lack of knowledge or information sufficient upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to his proofs.

Count Six- Void for Vagueness

72. Defendant City incorporates by reference its answers to Paragraphs 1 through 71 of the Complaint, as though fully set forth herein.

73. Answering Paragraph 73, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

74. Answering Paragraph 74, Defendant City states that the Ordinance speaks for itself.

75. Answering Paragraph 75, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

76. Answering Paragraph 76, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

77. Answering Paragraph 77, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

78. Answering Paragraph 78, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

79. Answering Paragraph 79, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

80. Answering Paragraph 80, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

Count 7- First Amendment Overbreadth

81. Defendant City incorporates by reference its answers to Paragraphs 1 through 80 of the Complaint, as though fully set forth herein.

82. Answering Paragraph 82, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

83. Answering Paragraph 83, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

84. Answering Paragraph 84, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

85. Answering Paragraph 85, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

86. Answering Paragraph 86, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

87. Answering Paragraph 87, Defendant City denies the allegations therein in the manner and form pleaded and as they are not true.

WHEREFORE, Defendant, CITY OF PONTIAC, respectfully requests that this Honorable Court deny all relief requested in Plaintiff's Complaint, including A) through F) of Plaintiff's prayer for relief. Defendant City further requests that the

Court enter judgment of no cause for action in the City's favor, and award to Defendant City its costs and attorney fees wrongfully incurred in defense of this action.

s/ Melanie M. Hesano
ROSATI SCHULTZ JOPPICH & AMTSBUECHLER PC
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
mhesano@rsjalaw.com
(P82519)

AFFIRMATIVE DEFENSES

Defendant, City of Pontiac (City) through its attorneys, Rosati, Schultz, Joppich & Amtsbuechler, P.C., asserts the following Affirmative Defenses in this matter:

1. Plaintiff has failed to state a claim upon which relief may be granted.
2. Plaintiff lacks standing to challenge the constitutionality of the City of Pontiac ordinance either on its face or as applied.
3. Plaintiff has failed to plead and cannot prove facts demonstrating a municipal policy of the City of Pontiac necessary to impose liability for damages under 42 U.S.C. § 1983.
4. Plaintiff has failed to plead and cannot prove facts demonstrating an actual controversy to support his claim for declaratory relief.
5. Plaintiff's challenge of the City's noise ordinance on constitutional grounds is moot.

6. Plaintiff has failed to plead sufficient facts to demonstrate that he has suffered a harm that would be redressed by a favorable decision here.

7. The noise ordinance is not unconstitutionally vague because the Ordinance gives fair notice of prohibited conduct as well as guides law enforcement in their judgment.

8. The noise ordinance does not violate the Overbreadth Doctrine because Plaintiff has not pleaded and cannot establish that a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.

9. The City of Pontiac cannot be held vicariously liable for the alleged wrongdoing of others, including law enforcement personnel.

10. The City of Pontiac cannot be held liable for any misuse, misapplication or misconstruction by others of the City's valid noise ordinance.

11. The City noise ordinance is a valid time, place and manner regulation of speech, and is content and viewpoint neutral.

12. Plaintiff is not entitled to injunctive relief because he has not alleged and cannot prove a substantial likelihood of success on the merits.

13. Plaintiff is not entitled to injunctive relief because he has not alleged and cannot prove facts demonstrating that he has suffered or will suffer irreparable harm.

14. Plaintiff has an adequate remedy at law, precluding any claim for injunctive relief.

15. Plaintiff is not entitled to injunctive relief because he has not alleged and facts to show and cannot prove that issuance of an injunction would not cause substantial harm to others, and that public interest would be served by an issuance of an injunction.

16. Plaintiff had a duty to, but has failed, to mitigate his damages.

17. Defendant is entitled to a set off for any and all collateral sources from which Plaintiff receives recovery.

18. Plaintiff's claims are barred by the doctrines of collateral estoppel and res judicata.

19. Plaintiff's claims are barred by the doctrine of judicial estoppel.

20. Plaintiff's claims are barred by the doctrines of waiver and estoppel.

21. This Defendant reserves the right to raise additional Affirmative Defenses that may become known during the pendency of this litigation, up to and including the time of trial.

s/ Melanie M. Hesano

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mhesano@rsjalaw.com
(P82519)

RELIANCE UPON JURY DEMAND

Defendant, City of Pontiac, through its attorneys, Rosati Schultz Joppich & Amtsbuechler, PC hereby relies upon Plaintiff's demand for a trial by jury in the above-entitled cause of action.

s/ Melanie M. Hesano
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27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
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mhesano@rsjalaw.com
(P82519)

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF eFiling system which will send notification of such filing to all parties of record.

s/ Dawn Hallman